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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PEOPLE OF THE STATE OF CALIFORNIA, *ex*)
rel. EDMUND G. BROWN JR., ATTORNEY)
GENERAL OF THE STATE OF CALIFORNIA,)
Plaintiff,)
v.)
ENVIRONMENTAL PROTECTION AGENCY,)
Defendant.)

CV 08-00735 RWW

ANSWER

Defendant Environmental Protection Agency (EPA), by and through undersigned counsel, answers and otherwise responds to plaintiff's Complaint as follows:

The introductory paragraph describes the action and requires no response.

1. This paragraph contains plaintiff's jurisdictional allegation, to which no answer is required, but to the extent an answer is deemed required, the allegation is denied.

2. This paragraph contains plaintiff's conclusion of law, to which no answer is required, but to the extent an answer is deemed required, the allegation is denied.

3. Defendant admits the allegations of the first sentence of paragraph 3. Defendant denies the allegations in the second sentence of this paragraph except to admit that plaintiff Brown is acting in his official capacity as chief law enforcement officer of the state of California, plaintiff

Answer to Complaint 08-00735 (RWW)

1 submitted a FOIA request, dated December 27, 2007, and as defendant has yet to complete its
2 response to plaintiff's request.

3 4. Defendant EPA denies the allegations of paragraph 4, except to admit that it is an
4 agency within the meaning of 5 U.S.C. § 552(f) and is subject to the requirements of the Freedom of
5 Information Act (FOIA).

6 5. Defendant admits the allegations of the first sentence of this paragraph. The
7 allegations of the second sentence of this paragraph constitute plaintiff's characterization of the Clean
8 Air Act, to which the Court is referred for a full and accurate statement of its content. The third and
9 fourth sentences of this paragraph constitute plaintiff's characterizations of its greenhouse gas
10 emissions (GHG Regulations), which regulations speak for themselves and no response is required.

11 6. Defendant denies the allegations in the first sentence of this paragraph. Defendant
12 denies the allegations in the second sentence of this paragraph, except to admit that, in a letter dated
13 December 19, 2007, EPA Administrator Stephen L. Johnson indicated his intent that the agency deny
14 California's waiver request. Defendant is without knowledge sufficient to form a belief as to the
15 truth of the allegations contained in the third sentence of this paragraph, and on that basis, denies the
16 allegations of this sentence. Defendant denies the allegations in the fourth sentence of this paragraph,
17 except to admit that Defendant has previously granted California approximately 50 waivers and that
18 Defendant sent a letter to Governor Schwarzenegger identified by plaintiff as Exhibit A. The letter
19 speaks for itself and no response is required.

20 7. Defendant admits that plaintiff submitted to it a FOIA request, a copy of which is
21 attached as Ex. B to the complaint. The remaining allegations of this paragraph constitute plaintiff's
22 characterization of the FOIA request, to which the court is referred for a full and accurate statement
23 of its content.

24 8. Defendant EPA admits the allegations of paragraph 8.

25 9. Defendant EPA admits the allegations of paragraph 9.

26 10. Defendants incorporate by reference their responses to paragraphs 1 through 9.
27
28

11. Defendant EPA is without knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff sent its FOIA request on December 27, 2007. Defendant admits that plaintiff sent to defendant a FOIA request, attached as Ex. B, dated December 27, 2007.

12. Defendant EPA is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 and, on that basis, denies the allegations of that paragraph.

13. To the extent that the first sentence of this paragraph seeks to characterize 5 U.S.C. § 552(a)(6)(A), the statute speaks for itself and no response is required. Defendant EPA admits the allegations contained in the second and third sentences of this paragraph.

14. Defendant EPA denies the allegations of paragraph 14.

15. To the extent that the first sentence of this paragraph seeks to characterize 5 U.S.C. § 552(b), the statute speaks for itself and no response is required. Defendant EPA denies the remaining allegations of this paragraph.

16. Defendant EPA denies the allegations of paragraph 16.

17. Defendant EPA admits that plaintiff has exhausted his administrative remedies under 5 U.S.C. § 552(a)(6)(C). The remaining allegations of paragraph 27 constitute a characterization of 5 U.S.C. § 552(a)(6)(C), to which the Court is referred for a full and accurate statement of its contents.

The remaining paragraphs of the Complaint constitute a prayer for relief to which no response is required. Defendant denies that plaintiff is entitled to any relief.

Defendant denies all allegations contained in the Complaint that they have not specifically admitted.

AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for which relief can be granted.

WHEREFORE, defendants pray that:

1. The Complaint be dismissed with prejudice;
2. plaintiff take nothing by this action;
3. no injunctive relief be awarded to plaintiff;
4. the court enter judgment in favor of defendant; and

1 5. the Court grant such other and further relief as it deems just and proper.

2 Dated: March 3, 2008

3 Respectfully submitted,

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5 Acting Assistant Attorney General

6 ELIZABETH J. SHAPIRO

7 Assistant Branch Director

8
9 _____/s/_____
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